

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *ex rel.* INTEGRA
MED ANALYTICS LLC,

Plaintiff-Relator,

v.

ISAAC LAUFER, *et al.*,

Defendants.

No. 17 Civ. 9424 (CS)

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISSAC LAUFER, *et al.*,

Defendants.

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
PARAGON MANAGEMENT SNF LLC'S MOTION TO DISMISS**

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Paragon Management SNF LLC (“Paragon”), through its counsel, respectfully submits this reply Memorandum of Law in Further Support of Paragon Management SNF LLC’s Motion to Dismiss the Complaint.

Introduction

Following the filing of a Complaint by a professional relator, and after three years of its independent investigation, searching through hundreds of thousands of documents; interviewing presumably dozens, if not hundreds of potential witnesses, deposing Laufer and Whitney for many hours, with the assistance and resources of a professional relator and its counsel, the Government filed a Complaint-in-Intervention that at first blush, looks like a long and full work. Upon the closer examination required by Rules 8 and 9(b), including noting that over two hundred pages are blank forms, it becomes clear that the Complaint should be dismissed in its entirety and specifically as to Paragon.

Each of the Facilities at issue has its own provider agreement with CMS; a unique NPI number Compl. at ¶15-25 and “each of the Facilities was overseen by [its] administrator”, not by Whitney, Paragon or Laufer. Compl. at ¶51 “The Facility’s MDS coordinator and the directors of rehabilitation, ... reported to the administrator” for the Facility at issue. Compl. at ¶51 Laufer had no ownership in one of the facilities during any relevant period of time. Compl. at ¶12 Laufer had no ownership interest in Quantum or Surge until at least 2016 Compl. at ¶50 and no ownership interest in Marquis prior to 2018. Compl. at ¶50. (approximately five years after the single alleged fraudulent submission) In the majority of facilities, Laufer was an investor who shared fractional ownership with various unnamed other investors without uniformity. There is no common

holding company, parent, or identity of interest alleged across the facilities at issue.

Compl. at ¶12 The facilities, let alone Paragon, are not alleged to lack any formality of corporate structure. Paragon previously pointed out that Health Care Facilities cannot delegate management responsibilities to others in New York. Memorandum of Law In Support of Paragon Management SNF LLC’s Motion to Dismiss the Complaint at p. 5-6 Even according to the Government’s most positive spin, “Paragon exists to provide support for Facilities and consolidate cross-Facility operations such as payroll,” not to direct or control anyone or any entity. Compl. at ¶13

In totality, the claims asserted against Paragon are inconsistent with the facts alleged in the Pleadings. The Government essentially states that the amount of therapy provided has nothing to do with Paragon, its owners or employees. “Prior to the commencement of skilled therapy in any discipline, a therapist certified in that discipline must evaluate the patient and develop a treatment plan that is approved by a physician.” Compl. at ¶47 “[A] medical practitioner must certify on a continuing basis that services are required because the individual needs skilled services...” Compl. at ¶33 “the services” must be “ordered by a physician.” Compl. at ¶37 “Medicare requires a physician or certain other practitioners certify that...conditions are met at the time of a patient’s admission...and recertify...no later than the fourteenth day...and additional recertifications ...at intervals not exceeding 30 days.” Compl. at ¶38 Doctors and therapist determine the amount of therapy provided—not Paragon.

Paragon, like Defendants Laufer and Whitey is not alleged to have submitted any false claims (only the facilities are accused). They are not alleged to have prescribed therapy (no named defendants prescribed therapy or certified the same as necessary).

Paragon is not alleged to have provided therapy (only licensed therapist can provide therapy and then only as prescribed by a physician--none of whom are alleged to have been directed or employed by Paragon). Paragon is likewise not alleged to have participated in any way in the preparation, submission and/or execution of any certifications to the Government.

Paragon has already suffered the significant cost and burden of three years of Governmental investigation. Because of the grand nature of the allegations (nine years and eleven facilities) Paragon will likewise be required to spend millions of dollars in defense costs and be further stigmatized by the accusation that it engaged in fraud. The Government was given three years, prior to intervention, to fully investigate the facts and the Professional Relators had time prior to that. If the Government did not have sufficient evidence it should not have brought a claim against Paragon. The Government was also given the opportunity by Your Honor to amend its pleadings after the Defendants voiced concerns with the pleading insufficiency. The Government declined to amend even after it was pointed out that the Government did not mention one of the named Defendants in any substantive section of the Complaint.

ARGUMENT

Rather than burden the Court with what would be a largely repetitive argument, it respectfully adopts the arguments set forth in the Reply In Support of Motion to Dismiss on behalf of the 11 Independent Facility Defendants, Reply Memorandum in Support of Isaac Laufer's Motion to Dismiss, and Defendant Tami Whitney's Reply Memorandum in Support of Defendant's Motion to Dismiss.

CONCLUSION

Wherefore, Paragon respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,

Dated: February 18, 2022

By: /s/ Aaron Lichtman

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